

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION, a Washington
corporation,

Plaintiff,

v.

MOTOROLA, INC., MOTOROLA
MOBILITY, INC., and GENERAL
INSTRUMENT CORPORATION,

Defendants.

CASE NO. C10-1823-JLR

DECLARATION OF KEVIN J. POST IN
SUPPORT OF DEFENDANTS'
OPPOSITION TO MICROSOFT'S
MOTION FOR A TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION

**NOTED ON MOTION CALENDAR:
April 20, 2012**

DECLARATION OF KEVIN J. POST IN SUPPORT OF
DEFENDANTS' OPPOSITION TO MICROSOFT'S MOTION
FOR A TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION
CASE NO. C10-1823-JLR

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1 I, KEVIN J. POST, declare as follows:

2 1. I am an associate at the law firm of Ropes & Gray LLP, counsel to Motorola, Inc.
3 (now Motorola Solutions, Inc.), Motorola Mobility, Inc. and General Instrument Corporation
4 (collectively "Motorola"), Defendants in this action, and am a member in good standing of the
5 bars of the State of New York and the District of Columbia.

6 2. I submit this declaration in support of Defendants' Opposition to Microsoft's
7 Motion for a Temporary Restraining Order and Preliminary Injunction, submitted concurrently
8 herewith.

9 3. Attached as Exhibit 1 is a true and correct copy of the Rebuttal Expert Witness
10 Testimony of Richard J. Holleman, marked as Hearing Exhibit CX-758C and admitted into
11 evidence in *In The Matter of Certain Gaming and Entertainment Consoles, Related Software, and*
12 *Components Thereof*, Inv. No. 337-TA-752 (U.S.I.T.C.) by ALJ Shaw, bearing production
13 numbers MOTM_WASH1823_0400192-207 (filed under seal).

14 4. Attached as Exhibit 2 is a true and correct copy of a June 14, 2011 letter sent by
15 David Heiner, Microsoft's Vice President and Deputy General Counsel, and Amy Marasco,
16 Microsoft's General Manager, Standards Strategy and Policy, to the Federal Trade Commission's
17 Office of the Secretary regarding Patent Standards Workshop, Project No. P11-1204, bearing
18 production numbers MOTM_WASH1823_0053365-81.

19 5. Attached as Exhibit 3 is a true and correct copy of the March 30, 2004 Cellular
20 Essential Properties Cross License Agreement entered into between Motorola, Inc. and Casio
21 Computer Company, Ltd., bearing production numbers MOTM_WASH1823_0023801-67 (filed
22 under seal).

23 6. Attached as Exhibit 4 is a true and correct copy of the July 1, 2004 Cellular
24 Essential Properties Cross License Agreement entered into between Motorola, Inc. and Kyocera
25 Corporation, bearing production numbers MOTM_WASH1823_0024696-745 (filed under seal).

1 7. Attached as Exhibit 5 is a true and correct copy of the December 22, 2004 Cellular
2 Essential Properties Cross License Agreement entered into between Motorola, Inc. and Option
3 NV, bearing production numbers MOTM_WASH1823_0025145-230 (filed under seal).

4 8. Attached as Exhibit 6 is a true and correct copy of an April 2, 2012 letter sent via
5 email from Jesse J. Jenner of Ropes & Gray LLP, counsel to Motorola, to Arthur W. Harrigan, Jr.
6 of Danielson Harrigan Leyh & Tollefson LLP, counsel to Microsoft, enclosing an April 2, 2012
7 letter from Dr. Marcus Grosch of Quinn Emanuel Urquhart & Sullivan, LLP to Jesse J. Jenner
8 (filed under seal).

9 9. Attached as Exhibit 7 is a true and correct copy of an article titled *The FTC, IP, and*
10 *SSOs: Government Hold-Up Replacing Private Coordination*, by Richard A. Epstein, F. Scott
11 Kieff and Daniel F. Spulber, published in volume 8 of the Journal of Competition Law and
12 Economics at page 1, in 2012.

13 10. Attached as Exhibit 8 is a true and correct copy of an article titled *Reasonable and*
14 *Nondiscriminatory (RAND) Royalties, Standards Selection, and Control of Market Power*, by
15 Daniel G. Swanson and William J. Baumol, published in volume 73 of the Antitrust Law Journal
16 at page 1, in 2005.

17 11. Attached as Exhibit 9 is a true and correct copy of an April 5, 2012 letter sent via
18 email from Arthur W. Harrigan, Jr. of Danielson Harrigan Leyh & Tollefson LLP, counsel to
19 Microsoft, to Jesse J. Jenner of Ropes & Gray LLP, counsel to Motorola (filed under seal).

1 I declare under penalty of perjury of the laws of the United States and the State of
2 Washington that the foregoing is true and correct.

3
4 DATED this 6th day of April, 2012.

5
6 

7 _____
Kevin J. Post

CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 6th day of April, 2012.

/s/ Marcia A. Ripley

Marcia A. Ripley